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LOWE'S HOME CENTERS, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL KOSTRIKIN,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC
DOES 1 To 25

Defendants.

No. 2:23-cv-2535 DAD DB

STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,

1 that this Stipulated Protective Order does not entitle them to file confidential
2 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
3 followed and the standards that will be applied when a party seeks permission from
4 the court to file material under seal.

5 B. GOOD CAUSE STATEMENT

6 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that the
7 Court, upon a showing of good cause may “issue an order to protect a party from
8 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.
9 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers, LLC’s Confidential
10 Documents contain proprietary and confidential trade secret information relating to
11 Defendant Lowe’s Home Centers, LLC’s business practices, policies and procedures,
12 its safety protocol, and information about its video surveillance system. Defendant
13 Lowe’s Home Centers, LLC. (“Defendant” or “Lowe’s”) derives independent
14 economic value from maintaining the confidentiality of the policies and procedures set
15 forth in these Confidential Documents.

16 Defendant is a retailer in the home improvement industry and has conducted
17 business in California since 1998. The home improvement retail industry is very
18 competitive. As a result of years of investing time and money in research and
19 investigation, Defendant developed the policies contained in the Confidential
20 Documents for the purposes of maintaining the security of its facilities, providing
21 quality customer service, and ensuring the safety of its employees, customers, and
22 other invitees. These policies and procedures, as memorialized in the Confidential
23 Documents, were created and generated by Lowe’s for Lowe’s, and are used for the
24 purposes of maintaining safety at its stores and creating efficient and organized work
25 environments for its employees. As a result, Defendant is able to minimize the waste
26 of any resources, which is a key factor in generating profitability for its business.

27 Defendant derives economic value from maintaining the secrecy of its Confidential
28 Documents. If disclosed to the public, the trade secret information contained in

Defendant's Confidential Documents would reveal Defendant's internal operations and could potentially be used by competitors as a means to compete for its customers, interfere with its business plans and thereby gain unfair business advantages. If Defendant's safety protocol were revealed to the general public, it would hinder Defendant's ability to effectively resolve and minimize liability claims, and its goal of protecting its customers and employees from theft and other crimes. Unrestricted or unprotected disclosure of such information would result in prejudice or harm to Defendant by revealing Lowe's competitive confidential information, which has been developed at the expense of Lowe's and which represents valuable tangible and intangible assets. Accordingly, the parties respectfully submit that there is good cause for the entry of this Protective Order.

2. DEFINITIONS

2.1 Action: Daniel Kostrikin v Lowe's Home Centers, LLC., Case No.: 2:23-cv-02535-DAD-DB.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as
4 an expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a
11 party to this Action but are retained to represent or advise a party to this Action and
12 have appeared in this Action on behalf of that party or are affiliated with a law firm
13 which has appeared on behalf of that party, and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL."

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also (1) any information copied or extracted from
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
3 Material; and (3) any testimony, conversations, or presentations by Parties or their
4 Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the trial
6 judge. This Order does not govern the use of Protected Material at trial.

7 4. DURATION

8 Once a case proceeds to trial, all of the information that was designated as
9 confidential or maintained pursuant to this protective order becomes public and will
10 be presumptively available to all members of the public, including the press, unless
11 compelling reasons supported by specific factual findings to proceed otherwise are
12 made to the trial judge in advance of the trial. See Kamakana v. City and County of
13 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
14 showing for sealing documents produced in discovery from “compelling reasons”
15 standard when merits-related documents are part of court record). Accordingly, the
16 terms of this protective order do not extend beyond the commencement of the trial.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 protection only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents, items,
24 or communications for which protection is not warranted are not swept unjustifiably
25 within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper purpose
28 (e.g., to unnecessarily encumber the case development process or to impose

unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

2 (b) for testimony given in depositions that the Designating Party identify
3 the Disclosure or Discovery Material on the record, before the close of the deposition
4 all protected testimony.

5 (c) for information produced in some form other than documentary and for
6 any other tangible items, that the Producing Party affix in a prominent place on the
7 exterior of the container or containers in which the information is stored the legend
8 “CONFIDENTIAL.” If only a portion or portions of the information warrants
9 protection, the Producing Party, to the extent practicable, shall identify the protected
10 portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive the
13 Designating Party’s right to secure protection under this Order for such material. Upon
14 timely correction of a designation, the Receiving Party must make reasonable efforts
15 to assure that the material is treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s Scheduling
19 Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived
26 or withdrawn the confidentiality designation, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing
28 Party’s designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information;

2 (h) during their depositions, witnesses, and attorneys for witnesses, in
3 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
4 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
5 will not be permitted to keep any confidential information unless they sign the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
7 by the Designating Party or ordered by the court. Pages of transcribed deposition
8 testimony or exhibits to depositions that reveal Protected Material may be separately
9 bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this Stipulated Protective Order; and

11 (i) any mediator or settlement officer, and their supporting personnel,
12 mutually agreed upon by any of the parties engaged in settlement discussions.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this Action as
17 “CONFIDENTIAL,” that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification
19 shall include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order
21 to issue in the other litigation that some or all of the material covered by the subpoena
22 or order is subject to this Protective Order. Such notification shall include a copy of
23 this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by
25 the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with
27 the subpoena or court order shall not produce any information designated in this action
28 as “CONFIDENTIAL” before a determination by the court from which the subpoena

1 or order issued, unless the Party has obtained the Designating Party's permission. The
2 Designating Party shall bear the burden and expense of seeking protection in that court
3 of its confidential material and nothing in these provisions should be construed as
4 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
5 directive from another court.

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
7 PRODUCED IN THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-
9 Party in this Action and designated as "CONFIDENTIAL." Such information
10 produced by Non-Parties in connection with this litigation is protected by the remedies
11 and relief provided by this Order. Nothing in these provisions should be construed as
12 prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce
14 a Non-Party's confidential information in its possession, and the Party is subject to an
15 agreement with the Non-Party not to produce the Non-Party's confidential
16 information, then the Party shall:

17 (1) promptly notify in writing the Requesting Party and the Non-Party
18 that some or all of the information requested is subject to a confidentiality agreement
19 with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this Action, the relevant discovery request(s), and a reasonably
22 specific description of the information requested; and

23 (3) make the information requested available for inspection by the
24 Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this court within 14
26 days of receiving the notice and accompanying information, the Receiving Party may
27 produce the Non-Party's confidential information responsive to the discovery request.
28 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce

any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return
15 all Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
19 must submit a written certification to the Producing Party (and, if not the same person
20 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
21 category, where appropriate) all the Protected Material that was returned or destroyed
22 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
27 attorney work product, and consultant and expert work product, even if such materials
28 contain Protected Material. Any such archival copies that contain or constitute

Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

THE VELEZ LAW FIRM, PC

Dated: June 24, 2024

By: /s/Natalya V. Grunwald
MARK P. VELEZ
NATALYA V. GRUNWALD
Attorneys for Plaintiff,
DANIEL KOSTRIKIN

THARPE & HOWELL, LLP

Dated: June 24, 2024

By: /s/Diana M. Rivera
STEPHANIE FORMAN
DIANA M. RIVERA
Attorneys for Defendant,
LOWE'S HOME CENTERS, LLC

Diana M. Rivera, the filer of this document, attests that all other signatories listed above, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing, pursuant to L.R. 131(e).

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.

1 2. The designation of documents (including transcripts of testimony) as confidential pursuant
2 to this order does not automatically entitle the parties to file such a document with the court under
3 seal. Parties are advised that any request to seal documents in this district is governed by Local Rule
4 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the
5 court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is
6 not enough under the local rules. In particular, Local Rule 141(b) requires that “[t]he ‘Request to
7 Seal Documents’ shall set forth the statutory or other authority for sealing, the requested duration,
8 the identity, by name or category, of persons to be permitted access to the document, and all relevant
9 information.” L.R. 141(b).

10 3. A request to seal material must normally meet the high threshold of showing that
11 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially related”
12 to the merits of a case, the request to seal may be granted on a showing of “good cause.” Ctr. for
13 Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City
14 and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

15 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of certain
16 documents, at any court hearing or trial – such determinations will only be made by the court at the
17 hearing or trial, or upon an appropriate motion.

18 5. With respect to motions regarding any disputes concerning this protective order which the
19 parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule 251.
20 Absent a showing of good cause, the court will not hear discovery disputes on an ex parte basis or
21 on shortened time.

22 6. The parties may not modify the terms of this Protective Order without the court’s approval.
23 If the parties agree to a potential modification, they shall submit a stipulation and proposed order for
24 the court’s consideration.

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1 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of
2 the terms of this Protective Order after the action is terminated.

3 8. Any provision in the parties' stipulation that is in conflict with anything in this order is
4 hereby DISAPPROVED.

5 DATED: June 27, 2024

6 /s/ DEBORAH BARNES
7 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name] of
_____, [print or type full address]

declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of California on _____ [date] in the case of Daniel
Kostrikin v Lowe's Home Centers, LLC., Case No.: 2:23-cv-02535-DAD-DB, I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this action. I hereby appoint _____ [print or type full
name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____